IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

MFA.No. 1051 of 2001(B)

WCC.268/1997 of COMMISSIONER FOR WORKMEN'S COMPENSATION THRISSUR (DEPUTY LABOUR COMMISSIONER).
.....

APPELLANT: 2ND OPPOSITE PARTY

THE NEW INDIA ASSURANCE CO. LTD.,
IRINJALAKKUDA, REP.BY THE
ASST. ADMINISTRATIVE OFFICER OF ITS
REGIONAL OFFICE ERNAKULAM,
M.G.ROAD, KOCHI 11.

BY ADV. SRI.A.R.GEORGE

RESPONDENTS: APPLICANT/ IST OPPOSITE PARTY
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1. **ANANDAN, S/O. NARAYANAN, NARIKKATT HOUSE, RESIDING AT MOTHIRAKANNI DESOM, PARIYARAM VILLAGE, MOTHIRAKANNI P.O., MUKUNDAPURAM TALUK.**

2. **K.P.VISWAMBARAN, S/O. PAPUTTY, KALAPURACKAL HOUSE, CHEMPUCHIRA, TRISSUR.**

BY ADV. SRI.P.V.BABY - R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA .NO.1051/2001

ORDER ON CMP. NO.7595/2001 IN MFA. 1051/2001

DISMISSED

3.12.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.T.SANKARAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.1051 OF 2001 ()

Dated this the 3rd day of December, 2007

J U D G M E N T

KOSHY,J.

Respondent claimant met with an accident during the course of employment. He claimed a compensation of Rs.2,33,568/-. Due to the above accident, he had fracture of left clavicle. Doctor certified that he had 15% physical disability and his loss of earning capacity is 50% as an auto driver. Under Section 4(1)(c)(ii) of the Workmen's Compensation Act, compensation has to be assessed by the Commissioner on the basis of the Medical practitioner's assessment of loss of earning capacity. Explanation to the above Sub Section provides that medical practitioner is bound to assess the loss of earning capacity considering the percentage fixed for scheduled injuries. Here only there is a clavicle fracture and movements of left hand difficulty will limited and 50% disability assessed by the doctor is arbitrary.

However, considering the fact that he was an auto driver and doctor assessed 15% physical disability, at the maximum loss of earning capacity can be fixed as 25%. The amount awarded with interest was already deposited by the Insurance company and this court has allowed to withdraw 50% of the amount awarded. In other wards, what the amount due has already been disbursed. Therefore balance amount pending in deposit should be returned to the Insurance company and amount already given as disbursed is treated as sufficient amount. Appeal is allowed to the above extent.

J.B.KOSHY, JUDGE

K.T.SANKARAN, JUDGE

prp

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.1051 OF 2001 (B)

J U D G M E N T

3rd December, 2007